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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 RICKEY A. BEAVER,  
12 Plaintiff,

13 v.

14 JUDY HOBDY, *et al.*,  
15 Defendants.

CASE NO. C05-210JCC

REPORT AND RECOMMENDATION

16 INTRODUCTION AND SUMMARY CONCLUSION

17 Plaintiff is a state prisoner who is currently confined at the Western State Hospital at  
18 Steilacoom, Washington. He brings this action under 42 U.S.C. § 1983 seeking monetary damages for  
19 alleged violations of his constitutional rights during his incarceration at the King County Regional  
20 Justice Center ("RJC"). Plaintiff names the following King County employees as defendants in this  
21 action: Judy Hobdy, Assistant Personal Health Service Supervisor; Debbie Nanson, Personal Health  
22 Services Supervisor; Katherine Jones, Corrections Sergeant; Ron Kintner, Corrections Program  
23 Specialist; and, Susan Belt, Corrections Program Supervisor for Classification.  
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1 Plaintiff now moves for summary judgment. Defendants oppose plaintiff's motion. Following  
2 a careful review of plaintiff's motion, defendants' response thereto, and the balance of the record, this  
3 Court concludes that plaintiff's motion for summary judgment should be denied.

#### 4 FACTS

5 Plaintiff was booked into the RJC on August 27, 2004. (Dkt. No. 16 at 3; Dkt. No. 44 at 2.)  
6 Plaintiff was seen by a registered nurse the following day for evaluation of physical injuries plaintiff  
7 had when he was booked into the jail. (*Id.*) Plaintiff advised the nurse at that time about his mental  
8 health condition. (*Id.*) Plaintiff also advised the nurse that he had previously been prescribed both  
9 Zoloft and Trazadone as a part of a mental health treatment plan. (*See id.*)

10 Plaintiff contends that even after advising the nurse of his mental health condition at the time of  
11 his booking, he was not seen by a jail psychiatrist, and did not receive the medications he required,  
12 until September 30, 2004. (Dkt. No. 16 at 3.) However, documents submitted by defendants in  
13 opposition to plaintiff's summary judgment motion establish that plaintiff was seen by psychiatrist  
14 David Kersey, M.D., on September 3, 2004, and that Dr. Kersey prescribed Zoloft and Trazadone for  
15 plaintiff at that time. (Dkt. No. 44, Attachment A.) The documents submitted by defendants further  
16 establish that plaintiff began taking the Trazadone on September 4, 2004, and that he began taking the  
17 Zoloft on September 5, 2004. (*Id.*, Attachment B.)

18 Plaintiff states that on approximately October 15, 2004, he began experiencing agitation and  
19 anxiety and that he began seeing shadows and hearing voices. (Dkt. No. 16 at 3.) Plaintiff asserts that  
20 he sent a kite to medical at about that time requesting to be seen by the psychiatric department, but  
21 that he received no response back to the kite. (*Id.*) Plaintiff asserts that he thereafter spoke to a nurse  
22 who advised him to file a grievance with defendant Hobdy. (*Id.*) The record appears to indicate that  
23 defendant Hobdy received plaintiff's grievance on November 12, 2004, and that she sent  
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1 a response to plaintiff on November 16, 2004, indicating that she had made an appointment for him at  
2 the psychiatric clinic. (Dkt. No. 16 at 13.)

3 On the morning of November 22, 2004, plaintiff was transported to the King County  
4 Correctional Facility (“KCCF”) in Seattle for his scheduled appointment. (Dkt. No. 16 at 5; Dkt. No.  
5 44 at 3.) However, plaintiff was not seen on that date, apparently because of an administrative error,  
6 and he was transported back to the RJC later that afternoon. (*Id.*) On November 23, 2004, plaintiff  
7 was sent a memo by psychiatric services apologizing for the confusion regarding his previous clinic  
8 visit and advising him that an appointment with the psychiatrist had been scheduled for November 30,  
9 at KCCF. (Dkt. No. 16 at 14.) On November 30, 2004, plaintiff was once again transported to  
10 KCCF and, once again, the appointment did not take place. (Dkt. No. 16 at 5; Dkt. No. 44 at 3.)  
11 Upon returning to the RJC, plaintiff filed a grievance with defendant Nanson. (Dkt. No. 16 at 22.) It  
12 appears that a response to that grievance was sent to plaintiff on December 6, 2004, advising that  
13 plaintiff would be seen by a psychiatrist at the RJC at an undisclosed date and time. (*Id.*)

14 On December 10, 2004, while still waiting to be seen by the psychiatric department, plaintiff  
15 was moved to a different housing unit, apparently because of population changes at the RJC. (*See*  
16 Dkt. No. 45, Attachment A at 2.) Plaintiff asserts that after being moved to the new unit, he  
17 experienced a panic attack with auditory and visual hallucinations. (Dkt. No. 16 at 6.) Plaintiff  
18 refused to allow the corrections officer to close his door and, as a result of plaintiff’s refusal to “rack  
19 back,” a code blue emergency was called by the corrections officer. (Dkt. No. 46, Attachment A.)  
20 Plaintiff was thereafter handcuffed and transported to pre-disciplinary housing. (Dkt. No. 45 at 2.)

21 During the course of his transport to pre-disciplinary housing, plaintiff contends that he began  
22 to experience chest pain, which caused him to slow his pace, and that he then began to sob  
23 uncontrollably. (Dkt. No. 16 at 7.) Plaintiff asserts that defendant Jones told him to “shut up” and  
24 threatened to pepper spray him. (*Id.*) Plaintiff then told defendant Jones that he would sue her for  
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1 excessive and unnecessary use of force if he was pepper sprayed. (*Id.*) Plaintiff contends that as soon  
2 as he threatened to sue defendant Jones, she had the escorting officers push plaintiff against the wall  
3 and that she then pepper sprayed him in the face. (Dkt. No. 16 at 7-8.)

4 Defendant Jones' version of these events differs slightly from plaintiff's. Defendant Jones  
5 states that while plaintiff was being transported to pre-disciplinary housing, he clenched his fists and  
6 attempted to resist. (Dkt. No. 45 at 2.) One of the escorting officers, Officer Fiechtner, asked  
7 plaintiff on two occasions if he was alright, but plaintiff did not respond. (*Id.*) Plaintiff then started to  
8 turn towards Officer Fiechtner. (*Id.*) According to defendant Jones, plaintiff was then placed against  
9 the wall in the hallway where she instructed him to calm down and advised him that he would be  
10 pepper sprayed if he continued to resist. (*Id.*) Plaintiff threatened to sue the officers if he was pepper  
11 sprayed, but the escort continued down the hallway. (*Id.*) Defendant Jones states that plaintiff then  
12 attempted to resist again and that she administered a short burst of pepper spray to plaintiff's face.  
13 (*Id.*) When plaintiff refused to comply with another directive of defendant Jones, and continued to  
14 resist, she administered another burst of pepper spray to plaintiff's face in order to gain compliance.  
15 (*Id.* at 2-3.) Plaintiff thereafter complied with officers' directives. (*Id.* at 3.)

16 After plaintiff was pepper-sprayed, he was turned around and escorted backwards by officers  
17 to pre-disciplinary housing. (Dkt. No. 16 at 8; Dkt. No. 45 at 3.) Plaintiff asserts that he was dragged  
18 down the hallway and then up a flight of stairs backwards and that he sustained injuries to his ankle  
19 during this process. (Dkt. No. 16 at 8.) Defendant Jones states that plaintiff was assisted up the steps  
20 and placed in his cell, and that a jail health nurse was immediately summoned in order to  
21 decontaminate plaintiff of the pepper spray. (Dkt. No. 45 at 3.) The jail health nurse decontaminated  
22 plaintiff and cleared him to remain in general population. (*See* Dkt. No. 44, Attachment D.)  
23 According to defendant Jones, plaintiff had no visible injuries, nor did he complain of any injuries,  
24 when officers left him in his cell. (Dkt. No. 45 at 3.)

1 As a result of his behavior on December 10, 2004, plaintiff was infraacted for resisting, for  
2 refusing orders resulting in an emergency response, and for refusing placement. (Dkt. No. 46 at 2, and  
3 Attachment C.) Plaintiff's disciplinary hearing was conducted on December 13, 2004, by defendant  
4 Kintner. (*Id.*) Defendant Kintner found plaintiff guilty of refusing orders resulting in an emergency  
5 response, apparently based upon plaintiff's own written statement. (*See* Dkt. No. 46 at 2, Attachment  
6 B at 10-11, and Attachment C.) Defendant Kintner then found plaintiff guilty of the other charges and  
7 imposed a sanction of ten days in disciplinary segregation and five days loss of good time. (Dkt. No.  
8 46, Attachment C.) Plaintiff appealed the decision of defendant Kintner and, on December 14, 2004,  
9 defendant Belt upheld the decision of defendant Kintner. (Dkt. No. 47 at 2.)

10 On December 16, 2004, plaintiff was finally seen again by Dr. Kersey. (Dkt. No. 16 at 11;  
11 Dkt. No. 44 at 3 and Attachment C.) At that time, Dr. Kersey apparently diagnosed plaintiff with post  
12 traumatic stress disorder and prescribed an additional medication for plaintiff to take along with the  
13 Zoloft and Trazadone. (*Id.*) Defendant Nanson states that Dr. Kersey continued to see plaintiff  
14 approximately monthly throughout the remainder of his incarceration at the RJC. (Dkt. No. 44 at 3.)

#### 15 DISCUSSION

16 Plaintiff alleges in his civil rights complaint that medical personnel at the KCCF and the RJC  
17 failed to provide adequate treatment for his mental health issues. Plaintiff also alleges that an officer at  
18 the RJC used excessive force against him. Finally, plaintiff alleges that he was denied due process in  
19 the context of a prison disciplinary proceeding. Plaintiff argues in his motion for summary judgment  
20 that he is entitled to judgment as a matter of law with respect to his inadequate medical care and  
21 excessive force claims.<sup>1</sup>

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23 <sup>1</sup> While plaintiff asserts in the fact section of his summary judgment motion that he was denied  
24 his right to a fair disciplinary hearing by defendants Kintner and Belt, he does not argue in his motion  
25 that he is entitled to summary judgment with respect to that claim. This Court will therefore confine  
its discussion to the two claims clearly argued by plaintiff in his summary judgment motion.

### Summary Judgment Standard

Summary judgment is proper only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). And, the court is required to draw all inferences in a light most favorable to the non-moving party. *Id.* at 248. Genuine disputes are those for which the evidence is such that a "reasonable jury could return a verdict for the nonmoving party." *Id.* Material facts are those which might affect the outcome of the suit under governing law. *Id.* Plaintiff argues, but fails to establish, that he is entitled to judgment as a matter of law with respect to his inadequate medical care and his excessive force claims.

### Inadequate Medical Care

Plaintiff first argues in his motion for summary judgment that defendants violated his rights under the Eighth Amendment when they failed to provide adequate care for his mental health issues. Plaintiff contends that the jail health department was deliberately indifferent to his serious mental health needs and that defendants Judy Hobdy and Debbie Nanson, in their role as jail health supervisors, had a duty to ameliorate the routinely poor medical care.

The Eighth Amendment imposes a duty upon prison officials to provide humane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). This duty includes ensuring that inmates receive adequate medical care. *Id.* Because plaintiff was a pretrial detainee at the time of the alleged harm, his claims arise under the Due Process Clause of the Fourteenth Amendment. *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996). Eighth Amendment standards are, however, still applicable to his claims. *See Id.* In order to establish an Eighth Amendment violation, a prisoner must satisfy a two-part test containing both an objective and a subjective component. The Eighth Amendment

1 standard requires proof that (1) the alleged wrongdoing was objectively "harmful enough" to establish  
2 a constitutional violation; and (2) the prison official acted with a sufficiently culpable state of mind.  
3 *Farmer*, 511 U.S. at 834.

4 Plaintiff offers no evidence to support his contention that defendants Hobdy and Nanson  
5 violated his right to adequate medical care. The record indicates that neither defendant Hobdy nor  
6 defendant Nanson provided any direct care to plaintiff. As supervisors in the medical department,  
7 their role was limited to responding to plaintiff's grievances and kites. The record indicates that  
8 defendants Hobdy and Nanson were, in fact, responsive to plaintiff's concerns regarding his need for  
9 follow-up psychiatric care as evidenced by the fact that they took steps to arrange psychiatric clinic  
10 appointments for plaintiff in an efficient fashion upon receiving plaintiff's grievances. The record is  
11 devoid of any evidence that either of these individuals was deliberately indifferent to plaintiff's need  
12 for ongoing mental health care. Accordingly, plaintiff is not entitled to summary judgment with  
13 respect to this claim.

#### 14 Excessive Force

15 Plaintiff next argues in his motion for summary judgment that he is entitled to judgment as a  
16 matter of law with respect to his excessive force claim. Plaintiff's excessive force claim arises out of  
17 the actions of defendant Jones during the course of plaintiff's transport to pre-disciplinary housing on  
18 December 10, 2004.

19 "[T]he Fourth Amendment sets the applicable constitutional limitations for considering claims  
20 of excessive force during pretrial detention." *Gibson v. County of Washoe*, 290 F.3d 1175, 1197 (9<sup>th</sup>  
21 Cir. 2002) (internal quotation marks omitted). Thus, plaintiff's claim of excessive force must be  
22 evaluated under the Fourth Amendment's objective reasonableness standard. *Pierce v. Multnomah*  
23 *County*, 76 F.3d 1032, 1043 (9<sup>th</sup> Cir. 1996). As the United States Supreme Court explained in  
24 *Graham v. Connor*, 490 U.S. 386, 397 (1989) "the 'reasonableness' inquiry in an excessive force case  
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1 is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of  
2 the facts and circumstances confronting them, without regard to their underlying intent or motivation."

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4 Plaintiff asserts that he became emotional while being transported to pre-disciplinary housing  
5 on December 10, 2004, because of the frustrations he was experiencing in obtaining proper medical  
6 care. He contends that he was handcuffed, that he had officers surrounding him, and that he did not  
7 pose a physical threat to anyone. Plaintiff further contends that defendant Jones nonetheless ordered  
8 officers to force plaintiff against the wall and that she then pepper sprayed plaintiff after he threatened  
9 to sue her for use of excessive force. Defendant Jones states in her declaration that she pepper  
10 sprayed plaintiff because he was resisting officers' attempts to move him to pre-disciplinary housing.  
11 Whether or not defendant Jones' actions can be deemed reasonable would appear to depend upon  
12 resolution of these disputed facts. Because there exists a genuine issue of fact as to whether defendant  
13 Jones' conduct was reasonable, summary judgment is not appropriate with respect to plaintiff's  
14 excessive force claim.

15 CONCLUSION

16 For the foregoing reasons, this Court recommends that plaintiff's motion for summary  
17 judgment be denied. A proposed order accompanies this Report and Recommendation.

18 DATED this 7th day of September, 2005.

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21 Monica J. Benton  
22 United States Magistrate Judge  
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